

Before the
Administrative Hearing Commission
State of Missouri



BACH NGUYEN,

Petitioner,

vs.

MISSOURI BOARD OF COSMETOLOGY
AND BARBER EXAMINERS,

Respondent.

No. 13-1879 CB

DECISION

We deny the application of Bach Nguyen for Class MO – manicurist license by reciprocity because he worked as a manicurist in Missouri without holding a valid Missouri license.

Procedure

On October 28, 2013, Nguyen filed a complaint appealing the denial of his application for a license to practice as a manicurist in the state of Missouri by reciprocity. We sent the Missouri Board of Cosmetology and Barber Examiners (“Board”) a copy of the complaint and our notice of complaint/notice of hearing on October 31, 2013. The Board filed an answer on December 2, 2013.

On April 24, 2014, we held a hearing on the Nguyen's complaint. Nguyen did not appear in person or by counsel. Scott T. Evans represented the Board. The matter became ready for our decision on June 4, 2014, when Nguyen's written argument was due.

Findings of Fact

1. On June 17, 2013, Nguyen submitted an application for a Class MO - manicurist Missouri license by reciprocity.
2. On September 10, 2013, while his application for Missouri licensure was pending, Nguyen performed cosmetology services at a cosmetology establishment in Missouri.
3. On October 17, 2013, the Board denied Nguyen's application.
4. Nguyen has never held a license entitling him to engage in the occupation of Class MO - manicurist or any other cosmetology service in the state of Missouri.

Conclusions of Law

We have jurisdiction to hear Nguyen's complaint.¹ Nguyen has the burden of proving he is qualified to be issued a license.² The Board did not raise issues of Nguyen's underlying qualifications for licensure under § 329.050. Instead it alleges there is cause to deny Nguyen's application for a license under § 329.140.³

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provide in chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate

¹Section 621.045. Statutory references, unless otherwise noted, are to RSMo Supp. 2013.

² Section 621.120.

³ RSMo 2000.

of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

* * *

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder[.]

The Board asserts that the facts established at the hearing in this appeal authorize discipline, and therefore denial, of the license Nguyen has sought via reciprocity.

Section 329.010 (5) defines the regulated occupation of “**Cosmetology**” to include:

(5) ...performing or offering to engage in any acts of the classified occupations of cosmetology for compensation, which include:

* * *

(b) “**Class MO – manicurist**” includes cutting, trimming, polishing, coloring, tinting, cleaning or otherwise beautifying a person’s fingernails, applying artificial fingernails, massaging, cleaning a person’s hands and arms; pedicuring, which includes cutting, trimming, polishing, coloring, tinting, cleaning or otherwise beautifying a person’s toenails, applying artificial toenails, massaging and cleaning a person’s legs and feet[.]

I. Misconduct, Misrepresentation or Dishonesty – Subdivision (5)

In its written argument, the Board limits its allegations under this subdivision to misconduct, misrepresentation, and dishonesty. Therefore, we limit our analysis under this subdivision to these issues.

Misconduct is the intentional commission of a wrongful act.⁴ Nguyen intentionally practiced as a Class MO – manicurist prior to obtaining a Missouri license. This was both an intentional act and a wrongful act. Nguyen committed misconduct.

Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.⁵ Nguyen made such a falsehood when he held himself out to be licensed as a Class MO – manicurist and performed such services at a cosmetology establishment in Missouri while his application was pending. Nguyen committed misrepresentation.

Dishonesty is a lack of integrity or a disposition to defraud or deceive.⁶ Nguyen exhibited a disposition to defraud or deceive when he held himself out to be a Class MO – manicurist and performed such services at a cosmetology establishment in Missouri while his application was pending. Nguyen acted with dishonesty.

Nguyen is subject to denial under § 329.140.1 and .2(5) for misconduct, misrepresentation, and dishonesty.

II. Violation of Statutes and Regulations – Subdivision (6)

The Board alleges there is cause to deny Nguyen's application under § 329.140.1 and .2(6), but neither its answer nor written argument contains a statute or regulation under chapter

⁴*Grace v. Missouri Gaming Comm'n*, 51 S.W.3d 891, 900 (Mo. App. W.D. 2001).

⁵ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11th ed. 2004).

⁶ *Id.* at 359.

329 that he allegedly violated. We cannot find cause to deny for uncharged conduct.⁷ Nguyen is not subject to denial under § 329.140.1 and .2(6).

III. Impersonation of a license holder – Subdivision (7)

The Board argues that Nguyen impersonated a licensed person by performing manicurist services for compensation. We turn to the dictionary to determine the plain meaning of the words, when necessary.⁸ To “impersonate” is “to assume the character of: pretend to be in actuality or personality, appearance, or behavior.”⁹ In that the practice of manicuring and performance of related services, for compensation, is prohibited without a license, we agree with the Board that performing such services in a cosmetology establishment certainly suggests having a license to practice the profession. Nguyen is subject to denial under § 329.140.1 and .2(7).

IV. Failure to display a valid license – Subdivision (12)

Finally, the Board argues there is cause to deny Nguyen a license on the basis of his failure to display a valid license as required by § 329.110. Since Nguyen never had a valid license, he could not have been in compliance with § 329.110, so there is no cause to deny Nguyen a license under § 329.140.1 and .2(12).

Discretion

As stated above, the appeal vests in this Commission the same degree of discretion as the Board, and we need not exercise it in the same way. However, Nguyen presented no evidence for us to use our discretion. Accordingly, we deny him licensure as a Class MO – manicurist.

⁷*Dental Bd. v. Cohen*, 867 S.W.2d 295, 297 (Mo. App., W.D. 1993).

⁸*See, E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011) (Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on).

⁹ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1133 (unabr.1986).

Summary

We deny Nguyen's application for a Class MO - manicurist under § 329.140.1 and .2(5) and (7).

SO ORDERED on September 10, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner